

WISCONSIN'S SEXUALLY VIOLENT PERSONS LAW

CHAPTER 980 OVERVIEW

Steve Watters
SRSTC Director
May 24, 2004

History of Chapter 980

- **State had a special “Sex Crimes Law” commitment during the 1960-70’s**
 - Chapter 975 - was repealed during the early 1980’s
 - Commitment under this law was in lieu of sentencing
 - Repealed because of a lack of effectiveness.
- **Chapter 980 is the State’s Sexually Violent Persons (SVP) Law:**
 - Statute was created in 1994.
 - Sparked by highly visible, controversial case.
 - Anticipated at time of adoption that the program would be small.
 - Original plan to house the program at WRC in Oshkosh.

History of Chapter 980

- **Chapter 980 is the State's Sexually Violent Persons (SVP) Law: (continued)**
 - Commitment rate significantly exceeded expectations.
 - US and Wisconsin Supreme Courts ruled on constitutionality.
 - Legislature authorized construction of Sand Ridge Secure Treatment Center.
- **How to address the problem of high risk sex offenders is a national issue:**
 - 16 other states have similar sorts of laws.
 - Modifications in sentencing laws--issue of earlier convictions.
 - Risk vs. cost arguments.

Chapter 980 Overview

What it is:

A chapter of the WI statute.

A civil commitment.

Patients

Commitment and release
controlled by courts.

“Sexually Violent Persons”

What it is not:

A part of the DOC code.

A criminal incarceration.

Inmates

Commitment and release decisions
determined by SRSTC.

“Sexual Predators”

Chapter 980 Overview Cont.

What it is:

Commitment process with full procedural safeguards of a criminal trial.

Periodic reviews of commitments.

An indefinite commitment.

Option of community placement.

Intended to address the highest risk sex offenders.

What it is not:

A review board making decisions.

One-time decision.

A lifetime sentence.

Required institutional placement.

Program targeted at all sex offenders.

Conditions that have to be proven during a Chapter 980 trial

- **Person was convicted, adjudicated delinquent or found not guilty by reason of mental disease for a sexually violent offense.**
 - Person can be committed from a juvenile or adult correctional facility or from a state mental hospital.
 - Sexually violent offense includes first and second degree sexual assault, sex assault of a child, child enticement, or any number of other felonies if it can be shown that the crime was sexually motivated.
- **At the time of the petition for probable cause, the person was within 90 days of discharge or release from a facility.**
 - Process needs to be handled in a timely manner.

Conditions that have to be proven during a Chapter 980 trial

- **Person has a mental disorder.**
 - Congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.
 - Very different definition than mental illness: “Substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgement, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.”
- **Person is dangerous to others because the person’s mental disorder makes it likely that he or she will engage in acts of sexual violence.**
 - Two general approaches to assessing risk: clinical judgement and/or actuarial assessment.
 - Statute defines “likely” as meaning “more likely than not.”

Conditions that have to be proven during a Chapter 980 trial

- **Dangerousness (continued)**

- Person has “serious difficulty in controlling behavior”
 - New standard that was created by U.S. Supreme Court in *Kansas v. Crane* (2002 decision).
 - WI Supreme Court ruled, in *State v. Laxton*, that Chap.980 meets the Crane standard through the connection between disorder and dangerousness.

- **Commitment Trial:**

- All constitutional rights available to a defendant in a criminal proceeding are available to a 980 defendant.

The Chapter 980 Review and Commitment Process

Individuals being release from sentence or commitment for sex crime

■ **First Step:**

- Evaluation by End of Confinement Review Board

■ **Second Step:**

- Special Purpose Evaluation

■ **Third Step:**

- Case Forwarded to DOJ or DA

■ **Fourth Step:**

- Probable Cause Findings by Court

■ **Fifth Step:**

- Person Evaluated by SRSTC Psychologist with Report to the Court

■ **Sixth Step:**

- Commitment Trial

■ **Ongoing Step:**

- Committed individual able to petition for supervised release after 18 months, and every six months thereafter.

CHAPTER 980: KEY TERMS

Detained:

Persons who are being held in a Chapter 980 facility, but have not yet had their commitment trial.

Committed to Institution:

Persons who have been committed under Chapter 980 and who have been ordered to be placed in the institution.

Supervised Release:

Persons who have been committed under Chapter 980 but who have been ordered to be placed in the community by the committing court. Individuals placed in the community are under DHFS supervision.

Discharge:

Persons who had been committed under Chapter 980 but whose commitment was ended by a court order. A person would be discharged from the 980 commitment if the court concludes that the person no longer meets the definition of a Sexually Violent Person.

Dual Status:

Persons who are detained or committed under Chapter 980, but who have been returned to DOC for a subsequent criminal sentence. This additional corrections time may have been the result of a parole revocation or a sentencing for a new crime.

Revocation:

A court process where an individual's Supervised Release is reversed and the person is returned to the institution. Revocations can occur because of rule violations or because of dangerousness to others.

Key Court Decisions and Legal Concepts

- **The key U.S. Supreme Court decision was *Kansas v. Hendricks*:**
 - Court's entire decision was based almost entirely on the finding that the commitment is not "punishment".
 - This eliminated the concern about double jeopardy and ex post-facto lawmaking.
 - Court viewed these commitments in the same light as it has traditionally viewed other involuntary commitment statutes.

Key Court Decisions and Legal Concepts

- The key Wisconsin Supreme Court decision was Wisconsin v. Post:
- “We conclude that treatment is a bona fide goal of the statute and we presume the legislature will proceed in good faith and fund the treatment programs necessary for those committed under Chapter 980.”
- “Commitment in a secure setting that provides specialized treatment for sexual offenders serves to protect society and to treat the individual.”

Key Court Decisions and Legal Concepts

- The key Wisconsin Supreme Court decision was Wisconsin v. Post: (continued)
 - “Individuals found to be sexually violent persons are committed to the custody of DHFS ‘for control, care and treatment’ in the least restrictive manner consistent with the requirements of the person .. Chapter 980 committed persons are defined as “patients” under Chapter 51, the Mental Health Act, and are entitled to the same rights as other patients, including the right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition.”

SUPERVISED RELEASE: CHAPTER 980's COMMUNITY PLACEMENT OPTION

- **Chapter 980 establishes Supervised Release (SR) --community placement for an individual committed under the law--as an option for the courts to consider.**
- **In its decisions on Chapter 980, the WI Supreme Court has stated its view that the SR option is a critical component of establishing the constitutionality of the law:**
 - **“Respondents rely heavily on the fact that those committed under Ch. 980 face an indefinite period of confinement in a secure facility as evidence that the true intent of the statute is punishment. However, Ch. 980 expressly provides for supervised release... Further, the person is entitled to discharge as soon as his or her dangerousness or mental disorder abates. We conclude that these provisions significantly detract from respondents’ argument that the statute’s primary purpose is punishment.” (State v. Carpenter)**
 - **“Chapter 980 cannot continue to survive constitutional scrutiny if the predicates for its constitutionality prove to be false. The State must take steps to ensure that proper placement and treatment actually happen. When an individual committed under Ch. 980 cannot be appropriately placed, ...the viability and feasibility of treatment are called into question.” (State v. Rachel, Bradley concurring opinion.)**

SUPERVISED RELEASE: STATUTORY FRAMEWORK

- **Supervised Release (SR) petitions are considered by Courts. In that process, Courts are advised by experts and reports. Also, the petitioning patient almost always testifies. SR proceedings are conducted before a Judge without a jury.**
- **In order to grant a SR, the court first has to conclude that the individual meets the commitment criteria for a Sexually Violent Person.**
 - **This means that the person's mental disorder still makes it likely that the person will commit an act of sexual violence, if the person is discharged from the Chapter 980 commitment.**
 - **If that conclusion is not reached, the statutes specify that the person should be discharged from the Ch. 980 commitment.**

SUPERVISED RELEASE: STATUTORY CRITERIA

- **The Statutes establish two basic criteria for Supervised Release. Specifically, the law states that the court must grant the SR petition unless it is proven by clear and convincing evidence that one of the following exists:**
 - 1. That it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care.**
 - 2. That the person has not demonstrated significant progress in his or her treatment or the person has refused treatment.**
- **The statutes list a number of factors that a court may consider when reviewing an SR petition: (A) nature and circumstances of the sex offending history; (B) mental history and present mental condition; (C) where the person will live; (D) how the person will support himself; and (E) access to and participation in community treatment.**